DOCUMENT RESUME

ED 112 796 HE 006 831

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TITLE Grievance Procedures: A Working Paper.
INSTITUTION American Council on Education, Washington, D.C.
PUB DATE Aug 75
NOTE 37p.

EDRS PRICE MF-$0.76 HC-$1.95 Plus Postage
DESCRIPTORS Administration; *Arbitration; *Collective Bargaining; *Collective Negotiation; Colleges; Committees; Faculty; Faculty Organizations; *Grievance Procedures; *Higher Education; Students; Universities

ABSTRACT

Campus grievance procedures, now mandated for most institutions by the Title IX regulations, ordinarily include informal measures to resolve a grievance, provision for a formal written complaint for the grievant, a grievance committee with a number of roles, a hearing committee for cases involving major policy issues and major sanctions, and a set of policies for the operation and guidance of the grievance system. Grievance procedures have two related functions; to determine whether an injury alleged by the grievant was the result of an error in an institution's policies and procedures or their administration, and if error is established, to determine an equitable redress for the grievant. In the light of the Title IX regulations specifically and of changing social and legal standards more generally, colleges and universities should reexamine their grievance mechanisms with particular attention to the following questions: (1) Is the structure of traditional grievance procedures adequate to today's requirements? (2) Who should participate if the procedures are to operate equitably and promptly? (3) Can informal grievance procedures be strengthened? (Author)

A WORKING PAPER • FOR DISCUSSION PURPOSES

Grievance Procedures: A Working Paper

W. Todd Furniss

Prepared for the
Commission on Academic Affairs
AMERICAN COUNCIL ON EDUCATION

A W O R K I N G P A P E R F O R D I S C U S S I O N P U R P O S E S

GRIEVANCE PROCEDURES: A WORKING PAPER

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August 1975

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Issued August 1975 by
American Council on Education
One Dupont Circle, Washington, D.C. 20036

> A recipient [institution covered by Title IX] shall adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action which would be prohibited by this part.
>
> § 86.8 (b) Title IX Regulations[1]

> Today the standard [of the grievance process] is quite different. Now the question is, "Do we as managers think this is a decision so fair and right that we can prove it to an experienced neutral who does not work for this organization?" The use of this standard has fundamentally changed conditions of working life for the better. The grievance process which has proved so valuable in industry can surely apply in some way to colleges and universities.
>
> Charles H. Rehmus[2]

Campus grievance procedures, now mandated for most institutions by the Title IX regulations, ordinarily include informal measures to resolve a grievance, provision for a formal written complaint from the grievant, a grievance committee with a number of roles, a hearing committee for cases involving major policy issues and major sanctions, and a set of policies for the operation and guidance of the grievance system.

Grievance procedures have two related functions: to determine whether an injury alleged by the grievant was the result of an error in an institution's policies and procedures or their administration, and if error is established to determine an equitable redress for the grievant.

In the light of the Title IX regulations specifically and of changing social and legal standards more generally, colleges and universities should reexamine their grievance mechanisms with particular attention to the following points elaborated in the corresponding sections of this paper:

I. Grievance structures in a new context. Is the structure of traditional grievance procedures adequate to today's requirements?

II. Participation in formal grievance procedures. Who should participate if the procedures are to operate equitably and promptly?

III. Informal grievance procedures. Can they be strengthened?

I

GRIEVANCE STRUCTURES IN A NEW CONTEXT

Grievances arise out of an institution's basic policies and procedures and their administration. Differences in institutional size, mission, student body, finances, mix of present employees, and attractiveness to potential employees, to name only a few factors, dictate that each institution establish its own policies and procedures, just as it must administer them. As a consequence, detailed grievance procedures of universal applicability to all colleges and universities cannot be prescribed. Nevertheless, it is possible to identify some structural elements which are today common to most campus procedures:

Informal procedures: usually no more than a provision that the grievant and the supervisor attempt to resolve the problem before an appeal to a formal mechanism;

Written complaint: a provision that, when informal procedures have failed to resolve a conflict, the grievant will indicate in writing to an appropriate person or committee the nature of the complaint, the evidence on which it is based, and the redress sought;

Grievance Committee: this term, used throughout the paper, refers to an individual, a committee, or a combination of the two, whose functions are to consider the written complaint and to resolve it or refer it to where it can be resolved. The options of the grievance committee are considered in Section II;

Hearing Committee: this term refers to a committee especially established to consider a particular case in which it is mandatory or desirable to provide for a quasi-judicial process, and where major policy issues or severe sanctions (e.g., dismissal) are involved.

In addition to these four common elements, some procedures -- especially those developed under collective bargaining contracts -- provide for arbitration, a procedure in which an unresolved case is referred to an arbitrator or body of arbitrators acceptable to both grievant and institution.

In the light of the Title IX mandate, the question arises whether this typical structure is adequate to handle grievances, or whether it needs modification or supplementation. Section I deals with the context in which a decision about structures will today have to be made.

(a) A new context

Until fairly recently, the resolution of campus grievances was almost solely the concern of the institution. Staff, students, and faculty had available to them some version of the four common procedural elements outlined above, and it was expected that in all but a very small number of cases an equitable resolution would be reached. Suitable policies and procedures for faculty members, academic professional staff, and students (i.e., in disciplinary cases) were developed through experience in a number of institutions and some of them were codified by the American Association of University Professors in a set of documents dealing with faculty employment, due process, academic freedom, student rights, and other matters.[3/] Some unresolved cases (normally contract and constitutional rights cases) had to be settled in the courts. Others were appealed to Committee A of the AAUP which, after investigation and attempts at mediation, might as a final resort have recommended censure of the administration of the institution.

Today, the context is different. A combination of hard times, with its attendant reduction of opportunities for faculty and staff to shift jobs when dissatisfied, and the establishment of new forums in which complaints may be heard off campus, have made complex and costly litigation of a grievance possible if not always probable. Further, the present state of disarray among the agencies to which appeals may be made, especially with respect to cases involving an element of illegal discrimination, makes it virtually impossible for an institution to know with any certainty what standards will be used in deciding a case that leaves the campus. It is in this context that Title IX now mandates that "recipient" institutions will "adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action which would be prohibited by this part."

(b) Coverage of persons

The Title IX regulations cover sex discrimination in all "recipient" colleges and universities under their employment provisions and programs for all students once admitted; they cover the admission of all graduate and professional students, and of undergraduate students in all public institutions and some types of private institutions. The mandated grievance procedures must apply to all persons covered by the regulations. This means not only faculty, professional and nonprofessional staff, and students already admitted, but applicants for staff positions and applicants for student status in the covered categories.

This is far wider coverage than is now likely to be provided for in most of the institutions to which Title IX applies. In the larger institutions, some form of grievance procedure has customarily been set up separately for employment groups and subgroups. Thus, the procedures for groundskeepers are separate from those for librarians, and those for faculty separate from those for other professional staff. These separations generally follow the lines of supervision which may join only at the vice presidential or presidential level. Further, within the classes, there may be separate procedures established according to the nature of the grievance. As an example, the AAUP's "Recommended Institutional Regulations" -- up to its last "tentative" provision, number 15, which calls for a Faculty Grievance Committee -- establishes different procedures for tenured faculty, probationary faculty where there is no allegation of academic freedom or discrimination issues, nontenured faculty where there is such an allegation, graduate student academic staff, and other professional staff (the last two with similar but separate procedures).[4/]

The very small institution is likely to have fewer different procedures -- if it has had any formal procedures at all -- partly because the supervisory lines very quickly reach a dean or president and the numbers and frequency of cases are likely to be small even though the issues may be no less difficult to resolve fairly. The small institution may have a distinct advantage, however, in that, with short lines of authority, it is possible to make a binding institutional commitment at a very early stage in a procedure.

Because the early resolution of a grievance is desirable, it is probably well to have a separate grievance mechanism for each division where the line of authority is long, rather than to try to combine them at too early a stage. Likewise, within the line of authority, it is probably wise to try to shorten and simplify the procedures so that cases are considered as early as possible by those with the authority to make

a final, institution-backed decision. For this reason, the AAUP's "tentative" Faculty Grievance Committee might very usefully be the first port of call for every faculty grievance passing the informal steps, regardless of contract status or the nature of the issues. It can serve as a screen, mediating the cases it can mediate at an appropriate level of authority, hearing and resolving cases within its own authority to decide, and immediately forwarding cases outside its authority to the body with authority to act. This committee might also be given responsibility for grievances initiated by unsuccessful applicants for faculty appointments.

In line with this reasoning, separate grievance committees for all students and unsuccessful student applicants, for nonfaculty professional employees and applicants, and for nonprofessional employees and applicants, might also be established. (For classes of employees under a collective bargaining contract, see section II(g) below.) Whatever the form of organization, all persons must be covered and all issues leading to grievances must be dealt with.

(c) Issues

Grievable issues are those in which there is a possibility of an error in the institution's policies (or lack of them), in its prescribed procedures for carrying out the policies, in the administration of these procedures, or in varying combinations of these. Thus, policies and procedures for the recruitment and selection of all employees, their assignment, working conditions, promotions, salaries, layoffs, terminations, retirement, and fringe benefits all have the potential for grievances, as do the grievance procedures themselves. Similarly, selection and admission policies for students, along with policies for attendance, grading, discipline, extracurricular activities, and of course athletics, also are subject to errors.

Traditionally, formal grievance procedures for faculty and professional staff have focused on major issues: nonrenewal of contract for probationary faculty, terminations of tenured contracts or of other contracts in mid-term, and especially nonrenewals and terminations in which there is an allegation of the infringement of academic freedom. For students, the emphasis has been on grievances arising out of sanctions imposed for student misconduct. Institutional grievance procedures for nonprofessional employees have sometimes been even less focused, at least until the employees have unionized, at which point they have been likely to become far more detailed.

The Title IX mandate for grievance procedures deals specifically and only with the issue of sex discrimination as it may affect any of the categories above, including all applicants for employment, many applicants for admission, and all students once admitted. Title IX was legislated out of an understanding that elements of sex discrimination can enter every phase of an institution's relationships with its employees and students, and thus it is necessary for institutions to provide for the possibility of a grievance covered by Title IX to arise in relation to any of its policies. The same is true, although Title IX does not cover them, for other kinds of illegal discrimination.

Issues of discrimination have a broader potential application than the earlier "hard issue," academic freedom, although they are in some ways similar. The difference today is that experience with academic freedom issues has given academic personnel and institutions some reasonably workable standards by which to establish and administer policy. That experience is notably lacking in discrimination issues, and thus they will loom large over the near future. An institutional set of grievance procedures must take this fact into account.

Serious and comprehensive as it is, the issue of discrimination is not the only important or relatively "new" issue that campuses will have to deal with and for which they should provide, even if not under a Title IX mandate. For example, a matter especially pertinent in the current "steady-state" conditions is that of retrenchment policies in a time of economic stress. These have been the subject of several court cases and a number of articles and have called forth from AAUP the draft of a revised "Recommended Institutional Regulation." [5/] Institutions revising their grievance procedures will wish to keep abreast of the developing body of comment on these issues.

Another issue that directly influences the nature and conduct of grievance procedures is that of the confidentiality of information. On the one hand, where the burden to establish a prima facie case of institutional error is on the grievant and evidence of the alleged error exists in institutional files, the grievant is entitled to it. On the other hand, institutions have a responsibility to protect information legitimately gathered under a guarantee of confidentiality. This responsibility is recognized to some extent by guidelines for federal agency use of institutional information. [6/] No solution to this dilemma is proposed here, but in finding a solution for its own use, institutions

should consider that in the handling of a case which may result in off-campus litigation with a record of campus action the grievant's burden of proof very quickly shifts to an institutional "burden of going forward," which in layman's terms effectively means that the institution must prove it did not do what the grievant alleges. Thus, neither absolute confidentiality nor open files will work and the institution should, if possible, establish in advance and in consultation with its counsel the controls on the use of information that will be needed both by the grievant and the institution.

Other issues that today are part of the new context are "class issues," those that may be presented more forcefully by the members of an affected group than by an individual in that group. Among them have been college anti-nepotism policies, equal pay for equal work by men and women, pension benefits, seniority systems in relation to affirmative action requirements during retrenchment, and "reverse discrimination" in admissions. Among these examples, the anti-nepotism policy has been the easiest to handle: a change of policy in the institution can remove the likelihood of class complaints, although individual cases may still arise. The equal pay issue is somewhat more difficult, despite the fact that equal pay for equal work is mandated by law and precedents exist for the dollar amounts of back pay to which individuals may be entitled. The difficulty here for most institutions is in determining appropriate definitions of "equal work" in the formula, especially among the ranks of professional staff and faculty. The definitions are critical in estimating and providing for salary increases and back pay, and it may take time and considerable negotiation to work out new policies and procedures that will be equitable within the intricate web of an institution's reward system.

The retirement benefit, seniority system, and reverse discrimination issues are even more difficult because, unlike the equal pay issue, there is no consistent body of applicable law or precedent on which a grievance committee could rely.

This review of some of the current individual and class issues not anticipated in most traditional grievance procedures suggests at least two consequences for the structure of the grievance mechanism. The first is that, at the early stage of a grievance, there should be provision for the intelligent sorting of cases. This means, for example, that the grievance committee of a university's College of Arts and Sciences should not try to resolve the complaint of a woman faculty member about her prospective pension benefits if that complaint is based solely on the institution's participation in TIAA. Whatever

the grievance committee itself tries to do in the way of fact-finding, mediation, or hearings, will be simple wheel-spinning. The second structural suggestion is that provision be made to establish ad hoc mechanisms for dealing with such major policy issues that may arise out of individual or class grievances. The job of the ad hoc mechanism will be two-fold: to consider both the revision of the policy leading to the grievance and the extent of injury and redress to the grievants.

(d) Records

The foregoing list of issues suggests that although Title IX itself deals only with grievances involving sex discrimination it behooves institutions to review and where necessary modify all their grievance procedures. There are few grievances which may not be alleged to have overtones of sex discrimination. Good procedures can be helpful in identifying those that do. But more than this, as the quotation from Charles Rehmus which heads this paper suggests, the social context for the handling of grievances has shifted from management answering the question, "Do we think we were right and fair in our dealings with employees?" to, "Do we as managers think this is a decision so fair and right that we can prove it to an experienced neutral who does not work for this organization?"

Although colleges and universities have operated for years on the basis that they should be able to demonstrate the rightness of their decisions, the requirements for "proving" the rightness have now considerably increased along with the number of cases in which proof is being demanded. Under the provisions of Executive Order 11246 and the regulations based on it calling for the development of Affirmative Action Plans by government contractors, an institution is required to prove not only the rightness of its decisions, but also to demonstrate to the satisfaction of the staff of the Office for Civil Rights of HEW that its policies and procedures in making its decisions are likely to operate in a nondiscriminatory fashion. To this end, the institution must design goals and prepare timetables for minority and women's employment, and its success in meeting goals and timetables, as judged by the Office for Civil Rights, may be used as primary evidence in proving rightness and fairness when the next federal contract is to be awarded. Some of the difficulties arising out of this situation have recently been identified by Professor Jan Vetter and the Administrative Conference of the United States and need not be reviewed here. 7/ The point for the grievance procedures is that

they must be comprehensive and fair and that there must be a record of each case if affirmative action statistical reports are not to be used as the sole determinant of equity.

The need for a clear and complete record is not that of forestalling or preventing later litigation in the courts. To the extent that a case deals with a citizen's civil rights under the law, the citizen cannot be prevented from taking the case to the appropriate agencies or the courts at any time: before pursuing it on campus, simultaneously with campus litigation, or after the campus procedures have been exhausted. Nevertheless, if a good record is made of what was done on the campus and why, and if what was done was done according to equitable principles, it is probable that agencies and courts will be willing to accept the record in lieu of de novo litigation of the portions of the case covered in it.

How early should the formation of the record begin, and who should begin it? Certainly every formal procedure on campus involving employment and student status should be accompanied by a record of what was done and why. Thus, it is not enough that a committee recruiting new faculty simply record its decision to recommend individuals A, B, and C for the current vacancies. Note must be made also of the steps taken to encourage applications under affirmative action standards, the qualifications sought, the method of matching individual applications to the qualifications, and for each rejected applicant the reason or reasons for rejection.

For grievances that arise outside formal employment-related procedures, it is not always clear when a record should be started. Supervisors and chairpersons have many informal conferences and conversations with staff and faculty members in which matters of assignments, working conditions, and staff interrelationships are settled without a suggestion of a grievance. At what point can they anticipate that there may soon be a claim? Ordinarily, it is only after something else happens (e.g., a colleague getting a better assignment in the view of the grievant) that a grievance surfaces. At that point, the chairperson may regret not having made a formal note of the content of the earlier conversations, perhaps sending a copy to the staff person. Reliance on memory, on either side, for dates and facts is common, and to make a note of everything said in the course of day-to-day contacts seems wasteful if not idiotic. Perhaps in cases like this, the supervisor's first step on learning of the grievance is to prepare a

memorandum from memory and whatever notes may be available, sending a copy to the grievant. If the grievance continues, this can be the initial record.

Among professionals, of course, there may be an unpleasant implication in the making of notes: formality replaces the informal give-and-take based on trust, and the initiation of a record in the anticipation of future trouble may appear to invite a self-fulfilling prophecy. If this problem is openly considered on campus, it may turn out not to be very significant, and adequate record-keeping can become an accepted convention.

(e) The structure of grievance mechanisms

Although today's context in which grievances must be heard is very different from that in which the traditional mechanisms were established, there appears to be no compelling reason to alter or add to the fundamental functional structure as defined at the opening of this section: informal procedures, written complaint, grievance committee, and hearing committee.

In very small institutions, it is possible that a single set of the four elements could manage all grievances, whether arising among students, faculty, or professional or nonprofessional employees. In larger institutions, there will be multiple sets to provide adequate coverage both of the persons and the issues. Deciding how many sets leads us to the second group of considerations under the general heading of participation in formal grievance procedures.

II

PARTICIPATION IN FORMAL GRIEVANCE PROCEDURES

Grievances are not resolved by structures but by people. One form of arbitration is instructive in judging who should participate in formal grievance procedures: the grievant selects one arbitrator, the defendant selects another, and the grievant and defendant together, or the two arbitrators already selected, select a third, often from a jointly acceptable list. In theory, the first two are chosen not as advocates but rather for their familiarity with the kinds of issues the grievant and defendant believe to be important in the case. All three arbitrators are supposed to be impartial, knowledgeable, skilled in eliciting pertinent evidence, and experienced.

The arbitration process also is instructive in that the duties and authority of the arbitrators are spelled out. Their job may, for example, be to judge whether the terms of a union contract were violated, but not to judge whether the terms are fair or even legal. The awards they prescribe may likewise be limited. Some of the principles that apply to arbitration systems are also suited to a campus grievance system: impartiality, knowledge and skill, and definitions of the range of activity and authority.

The two principal functions of the grievance procedure, as has been noted, are to determine whether institutional error has occurred and if so what constitutes an appropriate redress for the grievant. In deciding who should participate in the procedure, therefore, it is useful to examine in more detail the formal steps that the grievance bodies may take (subsection a); the need for promptness (b); and problems related to the nature and extent of redress (c). These in turn raise the question of whether a grievance committee can be given the authority to make awards (d), and what qualifications such a committee should have if it is to be given the authority (e and f). This section concludes with brief comments on grievance procedures under collective bargaining (g), and special provisions for discrimination cases (h).

(a) Actions in formal grievance procedures

A grievance body may find error in an institution's policies, prescribed in the procedures for carrying them out, in the administration of the procedures or in combinations of these. Errors in administration have sometimes been further subdivided into procedural errors (e.g., failure to notify an employee of an adverse tenure decision within prescribed time limits) and substantive errors (e.g., a deficient evaluation of the performance of an employee).

By the time a grievance has passed the informal stages and the grievant has prepared a written complaint, the issues should have been sufficiently refined so that the sources of the alleged errors have been identified and an impartial and knowledgeable grievance committee can begin the necessary sorting that eventually leads to action.

The grievance committee's options include the following;

1. Refuse action after a review of the written complaint, along with such additional information as the committee may solicit in order to determine whether a prima facie case of error has been made. If such a case has not been made, the committee may refuse further action, giving its reasons for doing so. If a prima facie case has been made, one of the following actions may be taken.
2. The grievance committee itself engages in more formal fact-finding and mediation. It should be possible to take this action in most cases brought to the committee: those in which no major institutional policy is being questioned and those for which the committee is so composed as to have the impartiality and include the knowledge and skill to resolve the case with a record that will stand scrutiny. To the extent that the institution is persuaded of the collective qualifications of the committee, it may choose to give it the authority to make some awards subject to post-award accountability. The institution in its fiduciary capacity will have to set limits on such awards, but it could grant a suitable committee considerable latitude.
3. Refer the case immediately to higher authority. A properly constituted grievance committee will recognize early that certain kinds

of cases cannot be resolved without special handling beyond the competence or authority of themselves or a hearing committee. They should not waste the grievant's and their time with these, other than to make a record of the reasons for their conclusion, and should send them to a designated administrative office along with any recommendations they may have for the nature of special treatment.

4. Remand the case for a replay of the procedures that led to the grievance. The purpose of a replay is to give the grievant a second chance under corrected conditions or to complete an inadequate record of the first round. It permits, for example, the introduction of evidence that may have been ignored, or an opportunity previously denied for the grievant to question witnesses. It is often used for these purposes by courts in civil cases. Care should be taken, however, that a replay not be prescribed as a punishment for the original committee, a placebo for the grievant, or a dodging of responsibility by the grievance committee. The committee should be able frankly and with knowledge to debate the issues involved and choose another option for action, including handling the case itself, if a replay appears to be perfunctory or punitive.

5. Forward the case to a hearing committee. The hearing committee is established when a particular case arises that requires a quasi-judicial due-process hearing. Such cases include those with severe sanctions (e.g., dismissal) and those with complexities that the grievance committee cannot handle and still meet its responsibility of acting promptly on a wide range of cases. Reference of a case to a hearing committee may be initiated either by the grievance committee or by the administration. What is envisioned is a committee with responsibilities that may include but are broader than those covered by the AAUP's Recommended Institutional Regulation #5 -- broader to cover other

kinds of cases than those envisioned by the regulation as well as to accept cases where the burden of proof may be on the grievant and not on the administration alone. The extent of the committee's authority to make an award should be spelled out for each case in the charge to the committee and may vary according to the nature of the case and the composition of the committee.

6. If the campus procedures permit, forward the case for arbitration. Ordinarily, this step follows the failure of other steps to resolve the case. It is designed to provide an equitable resolution without the delays and expense of litigation before the courts or governmental agencies. Whether a case that includes a record of arbitration will fare better off-campus than one that stops with a complete record of the campus handling of the case under sound and explicit procedures cannot be known. In Alexander v. Gardner-Denver the U.S, Supreme Court judged that an arbitrator's award did not bar a grievant from access to the courts. But in a recent case the Equal Employment Opportunity Commission and the parties to a union contract all agreed to submit a case to an arbitrator and to authorize him to determine an award normally only in the power of the federal district judges. 8/ Whether this practice, presumably accepted by EEOC in the interests of helping to clear its overloaded docket, might be deferred to in case of a further appeal by the grievant remains to be seen. And whether, and under what circumstances, institutions might decide to include arbitration as a final step in a grievance procedure depends on many circumstances, including whether a campus union makes this a matter for bargaining, as many of them have already done.

If arbitration has values that existing procedures do not, it is possible that the extra step arbitration would

introduce could be anticipated by making the earlier procedures resemble those of arbitration, and by training the persons involved to assume roles more like arbitrators than advocates.

7. Separate the elements of a case and take two or more of the above actions simultaneously. This step may be required in cases in which the grievance committee discovers an error in prescribed university policy or procedure, although not necessarily in its administration, and where it must refer the policy correction to another authority but may be able, by a different step (e.g., a replay, or its own mediation) to resolve the particular case equitably and promptly.

Each of these steps is affected by requirements of promptness and the varying nature of redress that may be awarded, and each raises questions about the authority and the characteristics of the grievance committee.

(b) Promptness

Promptness in settling a grievance is desirable for the grievant (except the one who may want to stretch a grievance into a period of extended income), for the institution, and for those involved in the procedures themselves. Promptness is therefore itself an element of equity, and the absence of promptness may legitimately be the source of an additional grievance.

The arbitrary administrative decision from which there is no appeal is, of course, the promptest, but on the grounds that a grievance deserves a hearing of some sort, that certain grievances are entitled to complex hearings, and that whatever is done in the formal procedures requires a record that will stand scrutiny, to some extent promptness must give way to procedures and procedures take time.

The time required can be kept to a minimum by reducing the number of steps that must be taken, and providing that a prescribed step can be taken quickly. Informal procedures can ordinarily be handled quickly since they usually involve few persons and the lines of communication are short. A time limit (so many days from the time the events leading to the complaint occurred or were discovered, or from the date of a failure of informal procedures) is ordinarily a legitimate requirement for the filing of a formal complaint.

There follows the review of the grievance committee, which should be expeditious and lead quickly to one of the options listed above. Promptness suggests that a single body to sort and assign all cases within a particular administrative chain of authority (e.g., faculty cases, student cases, professional employee cases, and nonprofessional employee cases) is likely to serve promptness better than the initial consideration of cases by separate groups, each constituted to deal with a different issue: applications, discrimination, academic freedom, nonrenewal of contracts, and so on. A grievance committee for all faculty matters, for example, having gained experience, should quickly be able to determine which of the optional actions should be taken. An additional advantage of a single committee is that it may have enough business to give its own frequent meeting schedule a high priority rather than force the members to readjust their schedules only when a need for its services arises.

If a case is to go on to a hearing committee, the problems involved in promptness may be multiplied unless care has been taken in advance to provide for the committee's makeup and activities. For example, instead of naming only enough persons to fill the slots of a single hearing committee, a good deal larger panel may be named in order to provide for substitutions for health, scheduling, or other reasons, or for challenges and withdrawals for potential conflict of interest. Time can also be saved if the necessary staff to prepare schedules, materials, physical facilities, and transcripts, and to do other essential chores were ready to do so, so that the committee itself need be convened only to organize, hear the case, and prepare its report.

Other sources of delay should be anticipated and provision made for managing them. For example, delays requested by the contending parties should not always be acceded to: standards for approving them should be set. Accommodation to institutional vacations and holidays must be anticipated to avoid, if at all possible, as much as a three-month lag in dealing with a grievance.

Perhaps the most difficult delay arises when a grievance cannot be resolved until a question of policy not in the power of the grievance or hearing committee to decide is considered by other bodies. College policy bodies and governing boards are ordinarily not under the gun of deciding particular cases promptly and their deliberations usually are tied to the academic calendar, with major policy modifications often taking a matter of years to be finally established. Although the process certainly could be speeded up, too much speed may cause a failure to consider adequately some of the intricate balances

that need to exist if a policy is to work well. There is no easy answer but the problem of resolving the immediate grievance may be to some extent controlled by consideration of factors discussed in the next two subsections.

(c) Redress

A role of those involved in the grievance procedures is to determine a suitable redress where error is found. First to be considered, of course, is what the grievant wants. This can be an apology, the correction of a record, the restitution of a minor financial loss, a change in working conditions or assignment, or opportunities for advancement; it can be the renewal of a contract denied under earlier procedures, or the award of tenure or promotion; it can be equalization of salary, with or without a claim to back pay; it can be the deposing of a colleague or administrator; it can be large monetary damages for the "loss of reputation" or for personal anguish. The list could be extended, particularly in the realm of psychological satisfaction.

Second to be considered is the redress the institution, as represented by its administrators, governing board, legal advisers, and financial supporters (including legislatures), may be prepared to give when there is a showing of institutional error. Some of this is governed by law: back pay in cases of discrimination, or penalties resulting from "institutional negligence" which often will be paid simply on the presentation of a claim with suitable evidence. But the institutional response to a claim for redress will depend very much on its own confidence that the award is reasonable, will be accepted, and will not expose the institution to further claims that individually may be unreasonable or collectively may be beyond its ability to meet at the same level for all cases.

These concerns of the institution are of little moment for the individual grievant who wants the claim settled and redress according to his or her own view of the injury. A grievant is not concerned that reinstatement or a large sum in compensatory damages may well set precedents that institutional interests cannot properly accept.

Grievance committees, and especially hearing committees dealing with complex cases, can be caught in the middle and need far more guidance than they characteristically have had. Problems seldom arise when the monetary stakes are low or when redress (as with a work reassignment) is in the competence of an institutional subunit to carry out with some dispatch. Nor is there much difficulty in the few cases in which a reasonable redress is spelled out in institutional regulations and the grievance committee naming the redress can expect it to be awarded.

The most difficult areas to deal with are those where the award may be specific but is clearly excessive and those where there is no agreement on or precedent for what the award should be. An illustration of the first arises when, because of a procedural error, a grievant is awarded an appointment, reinstatement, or tenure regardless of his qualifications for the job. In this matter, the AAUP's regulations -- or at least some committees' interpretations of them -- have appeared to say that proof of a procedural error, however slight, supersedes a sound qualitative judgment in determining reinstatement, or that a delay (even a procedurally avoidable one) in settling a grievance after a negative tenure decision may automatically confer "de facto tenure." There should be provisions in institutional regulations, where appropriate, to stop the clock for those whose grievance claims have been accepted for litigation, with the assurance that if the litigation results in reinstatement on the merits, there will be no loss of status; and that if error has been found, but reinstatement is not called for, a suitable redress may include monetary damages, or may only restart the clock for the salary that would have been paid following the original decision under the institution's "minimum period of notice" provisions.

An illustration of the second major problem in redress is to be found in discrimination cases. Here precedents are lacking because of the historical fact that discrimination as an issue on campus was until recently not recognized as redressable. Now that it is, it should not be impossible -- even though it may be difficult -- to establish some working understanding for use at least in the campus procedures. In the absence of any such standard, the system is open to a variety of blackmail in which an institution may have to balance paying a settlement even where it is not deserved against the expense of having to litigate every case off-campus, perhaps with an untutored grievance committee's recommendation as part of the grievant's claim for excessive damages.

What the price of discrimination should be is not within the scope of this paper. The question should not be harder to answer, and perhaps somewhat easier, than the question of the price of academic freedom, a major issue on which by now we have at least some guidelines. It is worth noting that there is an enormous range of error between, on the one hand, an announced institutional policy of discrimination in employment or admissions and, on the other, a demonstrably discriminatory statement of a single member of a faculty committee considering tenure or a student counselor advising a student. It should not be beyond the abilities of an institution to debate these differences, consider the clear

legal strictures in some sorts of cases, and come to agreement on at least the outlines of the kinds of redress the grievance procedures may lead to in various cases. The exercise may have additional benefits in sensitizing the community to the issues.

The point for the grievance committee is that in the absence of appropriate guidelines, it may be unable even to know where to assign a grievance, much less whether it can resolve the grievance itself. Although we cannot expect a schedule of redress to be as exact as the penalties printed on the back of a traffic ticket, nevertheless some movement can be made toward the kinds of minimum and maximum penalties often prescribed by law for the use of courts.

(d) Authority

The effectiveness of a grievance procedure is directly related to the distribution of authority on the campus. For day-to-day operations, the authority that may ultimately reside in the governing board is in part assigned to the president, who in turn reassigns some of it to administrators, faculty, staff, and students. The essential element in this authority is the ability to decide, subject to a post-decision accounting. In all but the smallest colleges, the distribution of authority from the president's office is likely to divide early and follow long and entirely separate lines. For example, in a large university, the academic line begins with a vice president, splits among a number of deans, from them to departmental chairpersons, and from them to faculty individuals and committees, while on the nonacademic personnel side a similar division goes to supervisors in the maintenance division, the business offices, and so on.

This division has obvious consequences for the grievance procedures. First, because grievances often can be settled (i.e., decided) close to the operating level, there should be an effective grievance machinery within each of the major lines of authority. Second, to be effective the grievance bodies should have access to all elements within that line. Ordinarily, this means separate grievance machinery for each of the affected classes of persons: students, professional employees, nonprofessional employees, and faculty. Where there is overlap at the end of a line (e.g., the civil service clerk under the supervision of a departmental chairman), the appropriate grievance line can be specified. (This has sometimes been a problem with graduate teaching assistants, but it is not insoluble.)

Although the structure of campus decision-making may clearly suggest the location of grievance committees, it is not as clear about the question of a committee's own

authority. It must of course have the authority to investigate grievances submitted to it. Its authority usually extends to mediation and to conducting hearings that may be extensive. However, in two respects the committee's authority is often extremely limited or ambiguous: it can recommend action by another body, but not demand it; and it can recommend an award but not give it.

As an example of the first, a grievance committee ordinarily can only recommend a replay of a departmental tenure review. In contrast, civil courts often command a replay in employment cases as part of a judicial decision, with orders about how the deficiencies of the initial review are to be corrected. As an example of the second, a grievance committee can determine that a specific redress is warranted and can recommend its award, but it cannot itself make the award. A court can command an award.

If it could be assumed that the grievance committees on campus were at least as impartial, skilled, and experienced as any combination of persons whose roles are to make the final campus decisions, then it should be possible to pass to the committees the authority to make final decisions subject only -- as in the case of administrative decisions in the chain of authority -- to some form of post-decision accountability.

Our review of the issues likely to arise under grievances today ensures that some final decisions must be reserved to the top administration, especially those in which there are as yet no precedents or the law is unclear. But it is also probable that under suitable circumstances the authority of grievance bodies could be strengthened. How, then, does one increase the probability that those involved in the grievance procedures will be impartial, knowledgeable, and experienced?

(e) Knowledge

When faculty cases get to court, there is a tendency on the part of academic commentators to suspect that the judge "doesn't understand academic life" well enough to make a good judgment, and they are surprised if he does. This suspicion has at its root the peer review system for faculty employment, advancement, and terminations.

The peer review system reserves to the faculty the responsibility for judging the qualifications and performance of faculty members on the grounds that only professionals in a field are capable of properly judging professional activities. In well-run systems, a number of elementary safeguards are provided: clear policies and procedures, criteria determined and published in advance of a review, evidence of qualifications and performance to be invited from the person under review, other evidence to be made known to him with

an opportunity to challenge or supplement it, and so forth. But once all these measures are taken, the matching of the evidence and the criteria takes place in the minds of the judges and the results of their judgment and the reasons for it can be reported only by them. Many grievances challenge the quality of that judgment. 9/

The conventional grievance committee, either by the statutes under which it is set up or because of its own belief in the need to rely on the judgment of professionals in the grievant's field, is not empowered to substitute its judgment for that of the divisional or departmental professionals. Its focus is usually, therefore, on identifying procedural or administrative errors and, when it recommends a replay, it confines its recommendations to the correction of procedural deficiencies. Where clearly illegitimate judgments have governed the initial decision, the recommended procedures for a replay may require each judge to record the reasons for his conclusion or call for additional departmental judges.

As an alternative in some cases on record, an agreement has been reached to submit the question of professional qualifications and performance to professionals outside the original department, either elsewhere in the institution or outside the institution entirely. This, too, has some problems, especially in the definition of what the outside professionals are to decide. It should be specified in advance whether they are to rate qualifications and scholarly production against their knowledge of professional activity generally, or professional activity in a particular type of institution, or whether they are empowered to decide all the questions that must be answered if the grievant is to be given tenure or a promotion in this department at this institution.

Proposals have been made recently that professional associations offer to suggest outside judges to serve as arbitrators in cases where the initial professional judgments in a faculty personnel case have been challenged. It would seem that such a step should be taken only after the procedures for the selection of the arbitrator and a careful spelling out of his role have been agreed to by all parties. 10/

The peer review system sets knowledge -- specifically, the specialized knowledge of a field -- as the chief qualification for the judges of faculty performance. Knowledge of other kinds pertinent to a personnel decision, it is assumed, can be supplied through training and experience. Impartiality is ensured not only by professional ethics but by a variety of procedural safeguards.

Those who argue for the abolition of the peer review system do so on the grounds that it is inherently partial (i.e., unfair) because of the subjective element it necessarily includes. They would require that all personnel decisions be based entirely on quantifiable, objective measures, but they have yet to demonstrate that such measures can adequately provide accurate evaluations of professional performance in diverse professional fields. It is significant, however, that the attack on the peer review system is an attack on its alleged failure to ensure impartiality, rather than in the validity of the base on which it rests: knowledge of a field.

In the current employment and student context outlined in Section I, knowledge of a field does not become any less important than it has been, but other kinds of knowledge -- about discrimination, the law, federal requirements, due process -- become far more important than before in both the initial actions that may lead to a grievance and the grievance procedures themselves. To the extent that this knowledge is absent, or not properly applied, cases will move to agencies or the courts where the importance of professional judgment may not be given the standing the professionals think it should have. Although many courts have deferred to professional evaluations by peers, some have not, awarding appointments or reinstatements on procedural grounds alone, and federal and local agencies by their actions have shown a similar tendency to rearrange the professionals' priorities.

To ignore these issues when establishing institutional policies and grievance mechanisms is to invite the destruction of the peer review system and the loss of its educational benefits altogether. The best defense will be to strengthen the guarantees of impartiality and to widen the knowledge that is brought to bear in all actions that may lead to grievances, as well as in the grievance procedures themselves.

The need for knowledge also suggests that those involved in grievance procedures must receive training for their roles to make up for individual lack of experience and skill. The training requirement is especially important today as the numbers of persons and numbers of issues to be dealt with in grievances multiply. For the foreseeable future, training must be continuous if good decisions are to be reached.

(f) Impartiality

Judge: I pray against bias. And against vanity.

Madrigal: And -- for charity?

> Judge: That's outside my job.... I ignore the heart, Miss Madrigal, and satisfy justice. Every little line on my face is written by law, not life.... I have to remember the things they said they said -- but didn't. I have to decide according to dry facts -- when appealed to in passion.
>
> Enid Bagnold, The Chalk Garden [11]

The judge had, 15 years earlier, sentenced Miss Madrigal to death for murder and then commuted the sentence to imprisonment because "there was a doubt." The dialogue illustrates again the ambiguous nature of impartiality as it has been recorded in scripture and legend. Probably a perfect impartiality would be a monster if it existed. What we seek instead is to guard against the obvious sources of unfair partiality and to ensure, as best we can, that what remains is not concealed.

The arbitration model given at the opening of Section II above illustrates both these principles. The decision to submit the case to arbitration is a decision to get judgment from persons who do not stand to benefit from whatever decision is reached, and therefore are removed from the principal source of improper partiality. Yet the choice of the first two arbitrators, one by the grievant and one by the defendant, recognizes that arbitration to be successful must include some measure of understanding of the special circumstances of the two parties. Also, of course, the provision is assumed to improve the level of knowledge in resolving the case.

The third arbitrator is not only a tie-breaker. More importantly, he or she serves to help all three to find a suitable balance among the conflicting claims of the dissident parties.

The requirements of distance, on the one hand, and familiarity, on the other, are antithetical, and yet for grievance procedures to be effective both must be present and in balance. It is not, therefore, only because of the costs and difficulty of litigating every grievance off-campus that it is desirable to attempt settlement on-campus. Instead, it is because we expect better settlements to be made on-campus.

Grievance committees for the initial hearing of nonprofessional employee disputes and student complaints on-campus frequently have representatives both of the employees or students on the one hand, and the administration on the other. This has not been common in the case of faculty grievances. The AAUP's recommended Institutional Regulations

call for an "elected faculty grievance committee" for initial hearing of grievances not otherwise provided for (regulation #15), a "duly elected faculty committee" for informal inquiry into dismissal and certain other serious cases (#5), an "elected faculty hearing committee" for the full-dress hearings required under regulation #5, and a "review committee" with unspecified membership for nonrenewal cases, where the only options are reassignment of the case to the original deciding body (#2) or reference to the committee handling full-scale hearings (#10). For graduate student academic staff and for "other academic staff" each regulation (#13 and #14) calls for "a duly constituted committee."

The exclusively faculty committee acting to determine error and recommend or assign redress departs from the arbitration model, for it relegates the presentation of administrative concerns to advocates appearing before the committee and fails to ensure that they are represented, impartially to be sure, on the body that decides the case, as they are in some student and other employee cases. It would also appear from evidence in cases heard in this way (and some of them publicly documented in AAUP censure recommendations) that more satisfactory and more rapid conclusions might have been reached if the hearing committee had included administrators. The system also may encourage faculty members asking for a hearing before an exclusively faculty grievance body to expect that body to temper its impartiality with advocacy, particularly if the grievance is with the administration and not with the actions of another faculty member or committee.

This system has the additional unfortunate effect of making the negotiation of redress inevitably follow the report of the hearing committee, with the hearing committee's recommendation a more or less public starting place. (Headline: "Faculty Committee Says Reinstate.") Some committees, understanding the desirability of bringing both sides together, if possible, so that a recommendation will be accepted promptly when it is made, undertake informal consultation with members of the administration, but a grievant awarded less than he or she thinks appropriate may publicly castigate the committee for going outside its formally assigned role and may, in fact, institute a grievance against the grievance committee itself.

In deciding who should be represented on grievance bodies, the notion of accountability should be considered along with authority. Ideally, an impartial committee is accountable for its impartiality and skill to those it serves. Thus, a college or university faculty

grievance committee is accountable to the college or university to deal with faculty grievances, and the college or university includes faculty, students, other employees, administrators, and members of the governing board. In fact, all the committees administering institutional policies, including those that make appointment and promotion recommendations at the department level, are so accountable. Further, all those in administrative roles carrying out institutional policy are so accountable. 12/ It has often been noticed, however, that the liability for deliberate or inadvertent error, including personal financial liability in actions reaching the courts, may fall heavily upon board members and administrators and not at all upon faculty committee members. Although this may help explain an administration's hesitancy to give final say to purely peer committees, it would not prevent placing heavier reliance on the recommendations of a committee in which administrative concerns have been represented in the formulation of the recommendations.

(g) Collective bargaining

Virtually all of the considerations reviewed above must be taken into account when an institution negotiates grievance procedures in a collective bargaining contract with one of its employee groups. 13/

Collective bargaining by its nature forces the procedures to stay in the chain of authority applicable to a particular group of employees, i.e., the "bargaining unit." The principal difference between managing grievances under a union contract and without one is that the union agent is a new administrative entity in the system. For member grievances, the union will negotiate a grievance procedure in which at some point the union agent becomes the advocate for the grievant against the institution.

Superficially, such an arrangement appears neater, and therefore somewhat more manageable, than traditional arrangements where judicial and advocate roles may be ambiguous. For one thing, since the union pays the bill for grievances and wishes to conserve its resources drawn from member dues, it will establish a mechanism for consulting with the grievant and screening out the cases it believes to be trivial or easily solved informally. Also, the union will try to build its contract with the institution so that the forums in which a grievance is handled with the administration are limited, and the roles of both administrators and union agent are prescribed. If arbitration is included, there are similar limitations. 14/

The conventional pattern of industrial collective bargaining does not, of course, always work as smoothly as its advocates suggest. Union agents, under pressure to keep the attention of their members, may press unwinnable cases in the grievance procedures when winnable ones are in short supply. 15/ By prescriptions in the contract that only certain persons in the administration are authorized to negotiate grievances, and only within the terms of the current contract as monitored by the union agent, opportunities for informal settlements may be missed, or even settlements more beneficial to the grievant than the union, protecting its contract, feels it can allow. Also, there has been some anxiety among faculty members that union representation -- although they may have favored it for potential salary benefits -- will reduce their traditional roles in shared governance of the institution and prevent or overly complicate some faculty-administration relations they like. This anxiety has led to a number of different arrangements, usually based on excluding from collective negotiations a number of areas of faculty governance and individual negotiation (e.g., for teaching assignments). In addition, as industrial experience and a considerable number of recent court cases show, both union activities and the contracts negotiated between a union and an institution are likely to be challenged as illegal, unconstitutional, or violative of an individual member's rights, and the individual member or classes of members are not prevented from suing the union, the institution, or both simply because both have administered their contract provisions expertly. Finally, where faculty governance and peer review are common, a grievance may be brought by union members against other union members rather than against the administration. For these and other reasons, collective bargaining does not have all the answers either.

The Title IX regulations mandating grievance procedures apply equally to unionized and nonunionized employment groups. Nondisoriminatory procedures will therefore have to be part of a contract. One may speculate whether the mandate for a grievance procedure for unsuccessful job applicants may not give the union more trouble than it does the institution.

(h) Discrimination cases

It will be some time before cases potentially or actually involving charges of discrimination can be dealt with confidently even by reasonably well-trained people. 16/ Some institutions have tried to meet this problem by assigning such cases to a special body for hearing, not always successfully. Sometimes this is because the body already

has another role involving a measure of advocacy, sometimes because the special group's expertise should have been brought to bear before the initial decisions were made that led to the grievance, and sometimes because a special group for discrimination, though it has expertise in the one area, lacks expertise in a number of others that must be dealt with simultaneously with discrimination. For example, there are elements in non-renewals and dismissals that are common to all such cases whether or not discrimination is a factor as well. It seems unwise to have two separate committees dealing with these common elements.

In the past, some institutions have recognized that any grievance case may have legal elements which the committee members cannot be expected to know about, and therefore at the request of the committee a counsel has been assigned to attend to the proceedings, to advise the chairperson and members, but not to participate in the questioning or to vote. It may be necessary to provide some such service for cases in which discrimination is or may be an issue, not only at the stage of a grievance but also before a procedure (e.g., filling a faculty vacancy, starting tenure considerations) is undertaken. Whoever, or whatever group, undertakes this service will in the next few years be kept reasonably busy as experience and legal and administrative agency decisions multiply. Even if one cannot expect perfection, such a service should substantially reduce costly errors born of ignorance, although it may also increase direct institutional costs.

(i) Participation

The considerations in this section, added together, pose the most difficult question in managing grievance procedures: who should have the authority to decide upon an award? On the one hand, the demands of equity for the grievant require that the procedures be impartial and prompt and that any award due be granted in full measure. On the other, a powerless or weak grievance committee, especially one without guidance and training, can mismanage or delay a resolution to the detriment of both the grievant and the institution. Implied in the discussion is the possibility of working out modifications in traditional procedures so that grievance committees can be strengthened in both experience and representation, and then be given the authority to make awards under acceptable guidelines and subject only to post-award accountability.

III

INFORMAL GRIEVANCE PROCEDURES

Most formal grievance procedures provide that an informal step to identify and resolve grievances be attempted before the first formal statement of a grievance is prepared. Usually, this step calls for a conference with a supervisor in the chain of authority, but quite properly it does not prescribe the scope of the conference. This procedure presumes that the supervisor is knowledgeable, impartial, and skilled in personal relations, and has the authority to resolve many kinds of grievances. Where these conditions obtain, the kinds of cases unresolved by the conference are likely to fall into a limited group of categories: those in which the grievant is certain that the supervisor is the cause of his distress; those the supervisor has no authority to resolve; and those in which the cause of the distress is beyond the supervisor's skill or experience to resolve.

Each of these categories has its familiar examples, and in each the question arises whether the case is properly moved next to formal procedures or whether there are additional informal steps that are desirable. In the first instance, if the grievant's distress arises from a decision of the supervisor and together they cannot work out a solution, it is still possible that third-party mediation can be helpful. One form is the services of an ombudsman. This may simply be someone both parties trust and agree to listen to; it may be a person the institution has designated for the role; it may be a committee chairperson whose role includes informal mediation. A somewhat more structured approach (admittedly, the border between formal and informal procedures gets thin at this point) might call for each party to select a person of his or her choice, these to select a third person, and the three selected to consider the case and propose a resolution. This technique might also serve in cases in which the supervisor is trying to resolve difficulties between two employees.

In the second case, where the supervisor does not have the authority to resolve a grievance, his informal role may continue if he shifts to the stance of mediator. A familiar example is the student complaint of inappropriate faculty behavior lodged with an official of a central student personnel office. The lines of authority on the faculty side meet those of the personnel office just short of the president's office. If the student has already tried and failed to get a hearing in the faculty member's department, or is apprehensive (because of a possible adverse effect on an important grade) about

trying to get a hearing, the student personnel officer may properly seek an informal conversation with the department chairperson without following authority channels through vice-presidential offices. Although sometimes delicate to handle, ordinarily all the parties involved benefit if the case can be resolved without resort to formal complaints.

Other cases in which the supervisor does not have the authority to resolve the issue may be referred directly to whatever level might resolve them. Part of the supervisor's skill is judging whether the referral should be for further informal steps (e.g., arranging a conference with the president) or for formal action in the grievance machinery.

The third example, the case that is unresolved because it is beyond the depth of the supervisor's skill and experience, includes those most difficult for anyone: supervisor, grievance committee, family, or friends. Examples include the alcoholic or the psychotic; the chronic nit-pickers and litigators; the fanatics for a cause or against a person or system; the destroyers and self-destroyers.

Of all society's institutions, colleges and universities, for good reasons, have been among the most accommodating to unconventional behavior, in many cases to the benefit of the institutions and society. The general ethos in relationships among the persons involved, colleagues and students, has properly been flexibility in adjusting institutional practices to the variety of thought and behavior that is believed to lend richness to the setting and the work to be done. This ethos, however, may encourage supervisors either to suspend judgment and thus defer what might be beneficial action or to pass the buck to someone else who may be just as incapable of acting. This is sad, but even sadder is the case of the supervisor without the necessary experience who gains the confidence of the employee and then finds his own untutored efforts to help wholly ineffective, so that he also begins to suffer distress.

There is no easy solution to such cases, but it may be wise for a supervisor (or an ombudsman or other person facing such cases) -- first asking the agreement of the grievant -- to choose and consult with other persons about the case, and then to base action on the results of the consultation. The action may well be that the consultants join the supervisor in the next interview with the grievant. This is not passing the buck: it is a legitimate, though informal, augmentation of the supervisor's own skill with that of others, and it might be far more helpful to the grievant than formal processes.

A paper dealing with grievances, especially at such length as this one, may very early give the impression that the working world is a minefield in which merely the sound of a voice in irritation may detonate a fatal explosion. Not so. It is, or can be, a place in which human beings can stretch their minds, exercise their skills, share their discoveries, and experience with friends the pleasures of intellectual absorption. It is also a place where disagreement, even when rhetorically insulting or scatalogical, can be good natured and healthy, and can lead to improvements beneficial to everyone.

Such a Utopia does not just happen, even in the best of economic times. Yet bad economic times, and times of social change which require new relationships, do not mean inevitably that the work place must be a snakepit. In all times, good and bad, what is needed is straight talk: not mean talk, but honest talk about the issues and about the personal feelings of the participants. It has been characteristic, particularly in larger organizations where participants are necessarily diverse, to meet divergences of position with structural remedies and official language. These serve some useful purposes, but if total reliance is placed on them, they can become a growing house of cards where the only meaning is what is printed on the faces of the cards. The element that is washed out of the system first is humor, which with its cousin irony has rare healing powers. Eliminated from the formal system, humor can serve its purpose only in the informal measures for dealing with grievances. If only for that reason, it is important that the informal steps in grievance procedures be preserved and strengthened.

Footnotes

1. Final Title IX Regulation Implementing Education Amendments of 1972: Prohibiting Sex Discrimination in Education, Effective Date: July 21, 1975, U.S. Department of Health, Education, and Welfare/Office for Civil Rights. (Washington: U.S. Government Printing Office, 1975, 0-577-869), p. 24139.

2. Charles H. Rehmus, "Alternatives to Bargaining and Traditional Governance," in Terence N. Tice, ed. Faculty Power: Collective Bargaining on Campus. (Ann Arbor: The Institute of Continuing Legal Education, Ann Arbor, Michigan 1972), p. 97.

3. AAUP Policy Documents and Reports, 1973 Edition, American Association of University Professors, February 1973. "1972 Recommended Institutional Regulations on Academic Freedom and Tenure," pp. 15-20. (A revision of Regulation 4, "Termination of Faculty Appointments Because of Financial Exigency, Discontinuance of a Program or Department, or Medical Reasons," appears in AAUP Bulletin, December 1974, pp. 411-413); "Joint Statement on Rights and Freedoms of Students," pp. 67-70.

   For nonacademic employees, a similar codification of practices is found in College and University Personnel Policy Models. (Washington: College and University Personnel Association, 1974.)

4. AAUP Policy Documents, pp. 15-20.

5. AAUP Bulletin, December 1974, pp. 411-413. For a review of some of the issues and two landmark court cases see W. Todd Furniss, "Retrenchment, Layoff, and Termination," Educational Record, Summer 1974, pp. 159-170.

6. The complexities of the protection of personnel records are illustrated in the federal government's recently published "Privacy Act Implementation: Guidelines and Responsibilities," (Federal Register 9 July 1975, pp. 28947-78) prepared by the Office of Management and Budget for federal agencies.

7. "Administrative Conference of the United States issues recommendations and statements," Federal Register 2 July 1975, § 305.75-2, p. 27926. The recommendations are based on consideration of an unpublished report by Jan Vetter, "Affirmative Action in Faculty Employment under Executive Order 11246," 16 September 1974.

8. "Discrimination Claim Arbitrated Under EEOC Conciliation Pact," in News and Views from the American Arbitration Association, No. 4, July-August 1975, p. 3, citing Irene Cruz and Teamsters Union, Local 890 and Basic Vegetable Products, Inc., in the July 15, 1975 issue of Summary of Labor Arbitration Awards, 196 AAA 2. In an address before Society of Professionals in Dispute Resolution (9 Oct. 1973, published by The Bureau of National Affairs, Inc. 10-23-73 (DLR) (No: 204) E-1 to E-5.) William B. Gould, who arbitrated the EEOC case, noted the failure of professional arbitrators to face the legal issues of discrimination in settling labor cases.

9. The analysis advanced here accepts the traditional view of the validity of peer judgment. This position is vigorously challenged by Martin J. Morand and Edward R. Purcell ("Grievance and Arbitration Processing," in Collective Bargaining in Higher Education -- The Developing Law, ed. Judith P. Vladek and Stephen C. Vladek. /New York: Practicing Law Institute, 1975/, pp. 297-330). Asserting that "The faculty member of today is an employee in every classic, measurable sense of the term," they contend that the argument that only peers can properly judge professional qualifications is not valid, but is used by both senior faculty members and administrators as leverage in the politics of power, and thus neither is willing to allow a

third party, especially an arbitrator, to substitute his judgment for the peers' and provide redress accordingly. Morand and Purcell believe that unless arbitrators can do so, a college or university faculty can exist only as an ineffective "company union" and never as a "real" and effective trade union, and that management will usually win in disputes involving peer judgment. Nevertheless, the grievance provisions in the authors' preferred model, the Pennsylvania State College contract, are an admitted compromise with prevailing faculty and administrative attitudes.

A survey of arbitration awards under collective bargaining to mid-1974 indicates that arbitrators have not always hesitated to substitute their own judgments for "peer judgments" even though forbidden to do so by the language of the contract. See Harold Levy, Academic Judgment and Grievance Arbitration in Higher Education, Special Report #20, Academic Collective Bargaining Information Service, April 1975.

10. For example, George R. LaNoue, "The Future of Antidiscrimination Enforcement," Change, June 1974, p. 44ff. LaNoue proposes that each disciplinary association appoint an Academic Review Committee (ARC) of 10-12 members, that the system be administered by the American Council on Education or a consortium, and that both sides agree to abide by decision.

11. Enid Bagnold, The Chalk Garden. (London: William Heinemann, Ltd. 1956), pp. 59-60.

12. Morand and Purcell, op. cit., would assert that neither faculty members nor administrators can assume the impartiality this formulation demands: after all, they are employees or managers, and attempts to pretend a shared responsibility for "the institution" are meaningless obfuscations for power politics.

13. The literature on collective bargaining in higher education grows apace. Collective Bargaining Comes to the Campus, by Robert K. Carr and Daniel K. VanEyck (Washington: American Council on Education) has been succeeded, but not superseded, by the Vladeks' Collective Bargaining in Higher Education -- The Developing Law (footnote 9); Faculty Bargaining: Change and Conflict, by Joseph W. Garbarino and Bill Aussicker (New York: McGraw-Hill, 1975); A Primer on Collective Bargaining for College and University Faculty, by Matthew W. Finken, Robert A. Goldstein, and Woodley B. Osborne (Washington: American Association of University Professors, 1975); Collective Bargaining in Postsecondary Educational Institutions (Denver: Education Commission of the States, 1974). The publications of the Academic Collective Bargaining Information Service (1818 R Street, N.W., Washington, D.C. 20009) have included a number of reports of research about what is actually happening in the resolution of grievances under collective bargaining.

14. A perhaps tentative view of the role of arbitration in colleges and universities is offered in "Arbitration of Faculty Grievances: A Report of a Joint Subcommittee of Committees A and N," AAUP Bulletin, Summer 1973:

> "Arbitration can be a useful device for resolving some kinds of disputes and grievances that arise in academic life. Especially when collective bargaining is practiced, resort to arbitrators who are sensitive to the

needs and standards of higher education may be the preferred way to avoid deadlocks or administrative domination. But arbitration is not a substitute for careful procedures that respect the autonomy of the faculty and administration in their respective spheres. A system of collective bargaining that routinely resorts to arbitration is an abdication of responsibility. This is especially true of the faculty's primary responsibility to determine who shall hold and retain faculty appointments." (p. 170).

This view is reflected in Finken, et al. A Primer on Collective Bargaining (see footnote 13), pp. 81-84.

15. See Ronald P. Satryb, "Faculty Grievances at SUNY: The First Two Years Under a Negotiated Contract," Special Report #10, Academic Collective Bargaining Information Service, 25 November 1974, pp. 1-2.

16. Margaret L. Rumbarger, "Internal Remedies for Sex Discrimination in Colleges and Universities," chapter 18 in Academic Women on the Move, Alice S. Rossi and Ann Calderwood, eds. (New York: Russell Sage Foundation, 1973), pp. 425-438, suggests the difficulties and recommends some procedures based upon the traditional models of the AAUP. George R. LaNoue, "Equal Opportunity Must Begin at Home," Chronicle of Higher Education, 10 March 1975, p. 32, provides a rationale and a checklist for campus resolution of these and other grievances, as does the College and University Personnel Association for procedures for grievances of nonacademic personnel, (CUPA, Policy Models, chapter 4).

Grievance and Arbitration Procedures in State and Local Agreements. (Washington: U.S. Department of Labor Bulletin 1833, 1975) provides information on actual contract provisions between unions and state and local agencies. Related studies of grievance procedures are listed on p. 1.